

§ 191.28

such acknowledgement or approval, as appropriate.

§ 191.28 Person entitled to claim drawback.

The exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, assigns the right to claim drawback to the manufacturer, producer, importer, or intermediate party. Such certification shall also affirm that the exporter (or destroyer) has not and will not itself claim drawback or assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for under this section may be a blanket certification for a stated period. Drawback is paid to the claimant, who may be the manufacturer, producer, intermediate party, importer, or exporter (destroyer).

Subpart C—Unused Merchandise Drawback

§ 191.31 Direct identification.

(a) *General.* Section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise upon which was paid any duty, tax, or fee imposed under Federal law because of its importation, if the merchandise has not been used within the United States before such exportation or destruction.

(b) *Time of exportation or destruction.* Drawback shall be allowed on imported merchandise if, before the close of the 3-year period beginning on the date of importation, the merchandise is exported from the United States or destroyed under Customs supervision.

(c) *Operations performed on imported merchandise.* In cases in which an operation or operations is or are performed on the imported merchandise, the performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law, on the imported merchandise

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is not a use of that merchandise for purposes of this section.

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§ 191.32 Substitution drawback.

(a) *General.* Section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)), provides for drawback on merchandise which is commercially interchangeable with imported merchandise if the commercially interchangeable merchandise is exported, or destroyed under Customs supervision, before the close of the 3-year period beginning on the date of importation of the imported merchandise, and before such exportation or destruction, the commercially interchangeable merchandise is not used in the United States (see paragraph (e) of this section) and is in the possession of the party claiming drawback.

(b) *Requirements.* (1) The claimant must have possessed the substituted merchandise that was exported or destroyed, as provided in paragraph (d)(1) of this section;

(2) The substituted merchandise must be commercially interchangeable with the imported merchandise that is designated for drawback; and

(3) The substituted merchandise exported or destroyed must not have been used in the United States before its exportation or destruction (see paragraph (e) of this section).

(c) *Determination of commercial interchangeability.* In determining commercial interchangeability, Customs shall evaluate the critical properties of the substituted merchandise and in that evaluation factors to be considered include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification and value. A party may seek a nonbinding predetermination of commercial interchangeability directly from the appropriate drawback office. A determination of commercial interchangeability can be obtained in one of two ways:

(1) A formal ruling from the Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade; or

(2) A submission of all the required documentation necessary to make a